



4333-15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-HQ-MB-2017-N068; FF09M21200-167-FXMB1231099BPP0]

Agency Information Collection Activities: OMB Control Number 1018-0022;

Federal Fish and Wildlife Permit Applications and Reports—Migratory Birds and Eagles

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on May 31, 2017. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-5806 (fax) or OIRA_Submission@omb.eop.gov (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803 (mail); or info_coll@fws.gov (email). Please include "1018-0022" in the subject line of your

comments. You may review the ICR online at <http://www.reginfo.gov>. Follow the instructions to review Department of the Interior collections under review by OMB.

FOR FURTHER INFORMATION CONTACT: Service Information Collection Clearance Officer, at [info_coll @fws.gov](mailto:info_coll@fws.gov) (email) or (703) 358–2503 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

Our Regional Migratory Bird Permit Offices use information that we collect on permit applications to determine the eligibility of applicants for permits requested in accordance with the criteria in various Federal wildlife conservation laws and international treaties, including:

- (1) Migratory Bird Treaty Act (16 U.S.C. 703 et seq.).
- (2) Lacey Act (16 U.S.C. 3371 et seq.).
- (3) Bald and Golden Eagle Protection Act (16 U.S.C. 668).

Service regulations implementing these statutes and treaties are in chapter I, subchapter B of title 50 of the Code of Federal Regulations (CFR). These regulations stipulate general and specific requirements that, when met, allow us to issue permits to authorize activities that are otherwise prohibited.

All Service permit applications are in the 3–200 series of forms, each tailored to a specific activity based on the requirements for specific types of permits. We collect standard identifier information for all permits. The information that we collect on applications and reports is the minimum necessary for us to determine if the applicant meets/continues to meet issuance requirements for the particular activity.

Information collection requirements associated with the Federal fish and wildlife permit applications and reports for migratory birds and eagles are currently approved under two different OMB control numbers, 1018–0022, “Federal Fish and Wildlife Permit Applications and Reports—Migratory Birds and Eagles; 50 CFR 10, 13, 21, 22,” and

1018–0167, “Eagle Take Permits and Fees, 50 CFR 22.” In this revision of 1018–0022, we are including all of the information collection requirements associated with both OMB Control Numbers. If OMB approves this revision, we will discontinue OMB Control Number 1018–0167.

II. Data

OMB Control Number: 1018–0022.

Title: Federal Fish and Wildlife Permit Applications and Reports—Migratory Birds and Eagles; 50 CFR 10, 13, 21, 22.

Service Form Number(s): FWS Forms 3–186; 3–186a, 3–2480, 3–200–6 through 3–200–9; 3–200–10a through 3–200–10f; 3–200–12 through 3–200–14; 3–200–15a, 3–200–15b, 3–200–16, 3–200–18; 3–200–67; 3–200–71; 3–200–72; 3–200–77 through 3–200–79; 3–200–81, 3–200–82; 3–202–1 through 3–202–17.

Type of Request: Revision of a currently approved collection.

Description of Respondents: Individuals; zoological parks; museums; universities; scientists; taxidermists; businesses; utilities; and Federal, State, tribal, and local governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for applications; annually or on occasion for reports.

Estimated Number of Annual Responses: 55,673.

Estimated Completion Time per Response: Varies from 15 minutes to 700 hours, depending on activity.

Estimated Annual Burden Hours: 124,496.

Estimated Annual Non-hour Burden Cost: \$2,085,125 (primarily associated with application processing fees).

III. Comments

On February 24, 2017, we published in the Federal Register (82 FR 11599) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on April 25, 2017. We received four comments in response to that Notice:

Comment 1:

A respondent feels the Service should not issue permits to kill eagles or other birds and wildlife. She also expressed the need to preserve and protect birds and wildlife.

FWS Response to Comment 1:

The Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act prohibit the killing of birds and eagles without a permit and authorize the Secretary of the Interior to establish a permitting program. The regulations implementing these acts (50 CFR parts 21 and 22) and the permitting program established under these regulations define the terms under which a permit to kill birds and eagles can be issued. The Service is obligated by these laws and regulations to issue a permit to anyone who shows a need and meets the requirements to receive one. Permits to kill birds and eagles are limited to specific instances such as for property damage, scientific study or protection of human health and safety. The number of birds and eagles authorized to be killed are strictly controlled based on the specific needs of the applicant, the population status of the birds or eagles applied for, and the direct effects any permit issued would have on these birds or eagles. Only after we establish that the killing of the birds or eagles requested will not affect the population of those birds will we issue a permit. Through this permitting program, we ensure they are protected and preserved for future generations of Americans to enjoy.

Comment 2:

The Avian Power Line Interaction Committee (APLIC) provided the following comments:

APLIC Comment 2A:

Re. "Whether or not the collection of information is necessary, including whether or not the information will have practical utility...."

Not only is the collection of information from those applying for the permits is necessary for good governance, it is also vital to the calculation of the burden that each agency uses to inform future regulation implementation. The collection of the information will not have practical utility if the Service does not absorb this information and incorporate it into future estimates.

FWS Response to Comment 2A/Action Taken:

We collect information from the public for a number of purposes. The information on applications is used to determine the identity of the applicant, the ability of the applicant to successfully conduct the requested activity, and whether the applicant meets all the necessary qualifications to conduct such activities. Reports (annual or other) are used to cumulatively assess the effects of the activities on migratory bird populations to ensure that our management is appropriate and that there are no effects that would significantly impact either the populations' status or jeopardize the continued existence of any particular bird species for use and enjoyment by the American public. Further, not only do we utilize this collected information for management purposes, but we incorporate it into each and every information collection renewal. No action was taken in response to this portion of their comment.

APLIC Comment 2B:

Re. "The accuracy of the Service's estimate of the burden for this collection of information...."

APLIC has gathered data from its membership to help the information collection adequately represent the power line Utility sector. The information in Table 1 is an averaged representative estimate from all types of power line companies, from rural cooperatives to investor-owned utilities. The data have been gathered across all U.S. Fish and Wildlife Service (Service) Regions and therefore represent many types of avian habitat, multiple flyways, and multiple levels of urban development and rural landscapes. The cost/hour estimate is also averaged across the United States.

FWS Response to Comment 2B/Action Taken:

We gather information from the public on the burden imposed to apply for a permit and report the results of any issued permit. Because of the broad range of applicants, burden estimates vary widely. As such, the estimated reported burden does not represent any particular class of applicant, but is intended to capture an approximation of the burden in a general manner. It is not unusual for a specific type of applicant to report their burden as much higher than that estimated. No action was taken in response to this portion of their comment. Based on our experience administering this collection of information, we believe our estimates of time burden to be accurate for most respondents.

APLIC Comment 2C:

Re. *“Ways to enhance the quality, utility, and clarity of the information to be collected....”*

The processes through which the Service determines burden hours and cost estimates are not transparent, nor are the costs per hour realistic of the real-world costs for these types of actions. In addition to relying on public comment and aggregating those costs, working with major permit stakeholders (such as the electric utility industry and/or industry groups like APLIC) to solicit data would

be helpful. Perhaps a more detailed report out for the multiple permittees would be more representative.

FWS Response/Action Taken to Comment 2C/Action Taken:

Throughout the process of securing renewed approval from the Office of Management and Budget to impose this information collection on the public, we seek input from those affected by the requirement. We use the information provided by the public to calculate and estimate burdens and make every effort to impose only the minimum amount of burden to accomplish the requirements to issue a permit and to assess the permit program's effectiveness in protecting migratory birds while at the same time assisting the public in conducting activities that affect populations of migratory birds. We welcome and appreciate the input from stakeholders to ensure we are not imposing an unrealistic burden to accomplish the goals of the permitting program and are always available to discuss the program with the public on ways to enhance its effectiveness and eliminate unnecessary burden. We will assess the application and reporting forms continually to ensure we only require information from the public that is absolutely necessary to run an efficient permitting program. Further, where necessary, we will continue to reach out to the affected public to enhance our reporting requirements and burden estimates.

APLIC Comment 2D:

Re. *"Ways to minimize the burden of the collection of information on respondents...."*

The associated reports for the permits are the elements to which it takes the longest to respond. These reports are necessary in order for the permit program to accurately collect information on biological impacts and baseline levels. There may not be a way around the information collection, but the in-print

acknowledgement and adjustment of burden hour estimates and costs would be helpful.

FWS Response/Action Taken to Comment 2D/Action Taken:

We recognize both the need for the reporting data, as well as the imposition of the burden on the public to report the results of their permit. We have begun an effort to modernize both the issuance of permits as well as the reporting. One such effort has been the change from paper reports for Special Purpose Utility permits to an Excel spreadsheet. The next step in the modernization of this report will be transition to an online Access database type of report. This effort should reduce the level of effort required by a permittee to report to us. As we move forward with this modernization effort, all reports will be updated to allow for online reporting, reducing or eliminating the need for a permittee to generate a paper report. For those permittees that do not have the necessary capabilities to access reports in an online manner, paper reports will remain in place for their convenience. We will continue to modernize the permitting program as resources allow, with the goal of reducing the application and reporting burden on the public as much as possible.

Comments 3 and 4:

Comments received from the Energy and Wildlife Action Coalition (EWAC) and the American Wind Energy Association (AWEA) are essentially the same, so a combined response is provided.

EAWC/AWEA Comment 3A, re. Monitoring:

EWAC Comment: EWAC questions the need and efficacy of extensive postconstruction monitoring for eagle take permits (ETPs), particularly with the additional requirement that monitoring must be conducted by an independent third party consultant.

AWEA Comment: AWEA believes that, as it stands, the Information Collection in the Eagle Rule provides limited utility for eagle life-of-facility monitoring.

FWS Response/Action Taken to EAWC/AWEA Comment 3A, re. Monitoring:

Monitoring is among the most important and essential elements of the Service's eagle permitting program. The Service has acknowledged in its responses to comments on the 2016 Eagle Rule and elsewhere (e.g., the Eagle Conservation Plan Guidance (ECPG), the Proposed Eagle Rule, and the Programmatic Environmental Impact Statement prepared for the Eagle Rule) that considerable uncertainty exists in all aspects of the eagle permitting program, particularly with respect to the accuracy of models used to predict the effects of actions like the operation of wind turbines on eagles. The Service has followed DOI policy and designed the eagle permitting program within a formal adaptive management framework, as described in response to other comments, in the preamble to the final rule, and in detail in Appendix A of the ECPG. Monitoring is an essential and fundamental element of adaptive management; it is absolutely necessary to reduce uncertainty and improve confidence in the permitting process; it is also essential to account for and provide credit to permittees who over-mitigate for their eagle take in the initial years of wind project operation. No action was taken in response to this comment.

EAWC/AWEA Comment 3B, re. Preconstruction Surveys:

EWAC Comment: Conducting preconstruction surveys on new electric transmission and distribution systems would be infeasible and highly inefficient; moreover, it has no known relationship between preconstruction data and eagle risk.

AWEA Comment: According to the requirements in Appendix C of the Eagle Plan Conservation Guidance, permit applicants and permittees are not required to conduct preconstruction surveys.

FWS Response/Action Taken to EAWC/AWEA 3B, re. Pre-Construction

Surveys:

As noted in the response to comments on the final rule, the Service agrees that preconstruction data needed for electric utilities may differ from that for wind facilities. As we stated in the Service's comments on the final rule, we will take these differences into account as we develop guidance for eagle incidental take permits associated with electrical infrastructure. No action was taken in response to this comment.

EAWC/AWEA Comment 3C, re. Local Area Population:

EWAC Comment: The applicant cannot plan for compensatory mitigation costs unless and until the Service conducts the LAP analysis, and can then only rely on the results of that analysis without the ability to verify or question it...the output of LAP analysis and the delay in learning the results of the LAP analysis creates uncertainty and potentially additional costs that cannot be planned for in advance.

And: The Service should not condition the amount of mitigation and NEPA analyses on the Local Area Population (LAP) results, or it should commit to providing LAP analysis early on in the applicant/Service coordination process and use transparent methods and data when doing so.

AWEA Comment: The manner in which the Service conducts the LAP analysis leaves project applicants and permittees with insufficient information regarding the allowable take limits and the extent of unauthorized take occurring within the LAP...

FWS Response/Action Taken to EAWC/AWEA 3C, re. Local Area

Population:

The LAP is determined by extrapolating the average density of eagles in the pertinent Eagle Management Unit (EMU) to the LAP area, which is the project area plus an 86-mile (Bald Eagle) or 104-mile (Golden Eagle) buffer; these distances are based on natal dispersal distances of each eagle species. As an example, consider a 1-year Golden Eagle nest disturbance permit application in western Colorado, which is in Bird Conservation Region (BCR) 6 under the current 2009 EMUs. The activity being undertaken could lead to the loss of 1 year of productivity, which has an expected value of 0.59 Golden Eagles removed from the population (the average 1-year productivity of an occupied Golden Eagle territory in BCR 16 at the 80th quantile, as described in the Status Report). This EMU has an estimated Golden Eagle population size of 3,585 at the 20th quantile, and the BCR covers 199,523 square miles, yielding an average Golden Eagle density of 0.018 Golden Eagles per square mile. The local area around a single point (the nest to be disturbed in this case) is a circle with a radius of 109 miles, which yields an LAP area of 37,330 square miles; thus, the estimated number of Golden Eagles in this LAP would be 671 individuals. The 5 percent LAP take limit for this permit under the current 2009 EMUs would be 34. The Service has developed a Geographic Information System (GIS) application that queries spatial databases on existing eagle take permit limits and known unpermitted take within the LAP area, as well as for any other permitted projects whose LAP intersects and overlaps the LAP of the permit under consideration. If this query indicates existing cumulative permitted (i.e., over all existing permits) take for the LAP area is less than 34, and the unpermitted take database and other information available to the Service does not suggest that background take

in the LAP is higher than average, then a permit for the take of 0.59 Golden Eagles could be issued without further analysis of the effects on eagles by tiering off this PEIS. If either condition were not true, the permit would require additional NEPA analysis. In either case, if the permit is issued, it would require compensatory mitigation to offset the authorized take, because the EMU take limit for Golden Eagles is zero.

The Service believes the LAP analysis will likely reduce costs for permits. The Service expedites work with project proponents when they approach Service staff to help them understand the potential impacts of their project and related compensatory mitigation “burden.” First, the LAP cumulative effects analysis is a relatively simple exercise that is conducted by the Service, so no additional resources are required from the applicant to conduct the analysis other than what would be required otherwise. Second, in cases where the LAP analysis is conducted as analyzed in the PEIS for the Eagle Rule, further project-specific NEPA analyses of the cumulative effects of the activity on eagles will not be necessary when projected take is within LAP take thresholds, thereby reducing overall costs for prospective permittees. No action was taken in response to this comment.

EAWC/AWEA Comment 3D, re. Cost Estimate/Burden:

EWAC Comment: Considering the increased hourly rates and hour estimates, the cost estimates provided in the Hours and Cost Table should be doubled, at a minimum, if revised to reflect actual costs. In sum, the Eagle Take Permit (ETP) application process has a far greater cost burden on the regulated community than reflected in the Hours and Cost Table.

(Including NEPA, Compensatory Mitigation, and ETP Application)

AWEA Comment: AWEA is concerned that the [burden] numbers are significantly underestimated.

FWS Response/Action Taken to EAWC/AWEA 3D, re. Cost

Estimate/Burden:

The purpose of establishing such a fee structure is to provide capacity to process permits. OMB Circular No. A-25 requires Federal agencies to recoup the costs of “special services” that provide benefits to identifiable recipients. Permits are special services that authorize recipients to engage in activities that are otherwise prohibited. Our ability to provide effectively these special services is dependent upon either general appropriations, which are needed for other agency functions, or on user fees. Accordingly, the permit fees associated with eagles permits are intended to cover the costs the Service incurs processing the average permit.

As described in the fee section of the 1996 Eagle Rule, the application fee for long-term permits was derived from average costs associated with processing these complex permits. Monitoring and mitigation costs, however, are scaled to the project, and would be expected to be lower for smaller-scale projects. The Service intends to involve the public in developing additional guidance for projects that pose a low risk of eagle take, which may be particularly relevant for small projects. Finally, in response to comments on the proposed Eagle Rule, the final regulation adopted an \$8,000 administration fee for long-term permits, rather than the proposed \$15,000 fee. Initial permit application processing fees for long-term permits did not change from the current \$36,000. If a permittee requests the programmatic permit to exceed 5 years, then there will be an \$8,000 review fee every 5 years to recoup the Service's review costs. With a 5-year maximum permit duration, renewal of a permit would require a

\$36,000 permit application processing fee, so the \$8,000 administration fee reduces costs to small businesses engaged in long-term activities. The Service acknowledges that some service sectors may have costs and hour estimates that differ from those estimated, and some projects may be inherently complex, but we stand by our original estimates, because the reasonable amount of time and expenditures project proponents and their contractors may likely expend for an average ETP.

It is not possible for the Service to survey all applicants for information on hourly rates paid for preparation and provision of the information required to make a decision on issuing an ETP and the authorizations in such a permit. Hourly rates for the burden estimate were selected from the average compensation tables published by the Bureau of Labor Statistics and include estimates of benefits. No action was taken in response to this comment.

EWAC/AWEA Comment 3E, re. Low Risk Permit:

EWAC Comment: EWAC strongly believes that a low-risk or general permit program for eagles is essential to resolving many of the issues surrounding ETPs.

AWEA Comment: AWEA strongly believes the Service should develop a low-risk permitting option.

FWS Response/Action Taken to EWAC/AWEA Comment 3E, re. Low Risk Permit:

In the Eagle Rule PEIS, the Service programmatically analyzes eagle take within certain levels and the effects of complying with compensatory mitigation requirements to allow the Service to tier from the PEIS when conducting project-level NEPA analyses. The PEIS will cover the analysis of effects to eagles under NEPA if: (1) The project will not take eagles at a rate that

exceeds (individually or cumulatively) the take limit of the EMU (unless take is offset); (2) the project does not result in Service authorized take (individually or cumulatively) in excess of 5 percent of the LAP; and (3) the applicant will mitigate using an approach the Service has already analyzed (e.g., power pole retrofitting), or the applicant agrees to use a Service-approved third-party mitigation program such as a mitigation bank or in-lieu fee program to accomplish any required offset for the authorized mortality. The PEIS, therefore, should streamline the NEPA process for these projects. We will consider legal mechanisms for streamlining take authorizations to low-risk or lower impact activities in the future.

EAWC/AWEA Comment 3F, re. Third-Party Monitoring:

EWAC Comment: Having a blanket requirement for third-party monitoring for all long-term ETPs is of limited utility and significant cost.

AWEA Comment: The practical utility of requiring third-party monitoring of all long-term eagle take permits, as required in the Eagle Rule, is simply not justified in light of the excessive burden such monitoring imposes on permittees.

FWS Response/Action Taken to EAWC/AWEA Comment 3F, re. Third-Party Monitoring:

The Service received a large number of comments on the proposed Eagle Rule urging us to require third-party monitoring on long-term permits, and we agreed with these commenters. The final regulations require that for all permits with durations longer than 5 years, monitoring must be conducted by qualified independent entities that report directly to the Service. In the case of permits of 5-year duration or shorter, such third-party monitoring may be required on a case-by-case basis. We do not agree that there will be significant additional costs imposed by the requirement for third-party monitoring. Most companies

already rely on and pay for consultants to conduct project monitoring, presumably because it is more cost-effective than supporting those activities in-house. No action was taken in response to this comment.

EAWC/AWEA Comment 3G, re. Waivers:

EWAC Comment: Some EWAC members have encountered reluctance from the Service to issue waivers under the Eagle Rule, even where projects have fallen under the listed circumstances when a waiver would be granted. If the Service is unwilling to issue waivers, then as a result many facilities may face delays of several years, the prospect of no permits, additional costs, and/or legal risk.

AWEA Comment: AWEA believes there is value in the waivers of Information Collection pursuant to the Eagle Rule. Waivers should be made for operating facilities where the new requirements for preconstruction surveys are no longer attainable.

FWS Response/Action Taken to EAWC/AWEA Comment 3G, re. Waivers:

The final Eagle Rule regulations contain provisions that allow applicants to obtain coverage under all of the provisions of the prior regulations if they submit complete applications satisfying all of the requirements of those regulations within 6 months of the effective date of the final rule. However, we note that the Service guidance since 2011 has recommended 2 or more years of preconstruction eagle surveys, so planners of any prospective wind projects or other industry project conceived since then should have been aware of this. The regulations are not retroactive, and we are incorporating a 6-month “grandfathering” period after the effective date of the rule, wherein applicants (persons and entities who have already submitted applications) and project proponents who are in the process of developing permit applications) can choose

whether to apply (or re-apply) to be permitted under all the provisions of the 2009 regulations or all the provisions of the final regulations.

The Service is developing policy on when waivers may be appropriate, and we will consider these comments along with the many others received on the proposed rule as part of that process. In the meantime, we recommend that project proponents work closely with Service staff to ascertain when waivers may be applicable. When eagle take has already occurred, projects will need to seek a civil settlement with the Service before a waiver, or a permit may be granted.

EAWC/AWEA Comment 3H, re. Module for Electric Transmission and Distribution:

EWAC Comment: The Eagle Rule is strongly focused on the wind energy sector, and, as a result, several aspects of the Eagle Rule are unclear in their application to electric transmission and distribution. The result of this lack of clarity means potential delays, costs, and litigation risks that a non-wind energy applicant must bear. The Service should prioritize the development of guidance for the electric transmission and distribution industry and work collaboratively with the industry to ensure that the guidance is consistent with the practical realities of industry operations.

FWS Response/Action Taken to EAWC/AWEA Comment 3H, re. Module for Electric Transmission and Distribution:

At this point, the only such standards were those included in the final Eagle Rule for estimating eagle take at wind facilities. The Service plans to develop standards for other industries in the immediate future, and will seek industry input in the development of those protocols.

IV. Request for and Availability of Public Comments

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

V. Authorities

The authorities for this action are the Migratory Bird Treaty Act (16 U.S.C. 703, et seq.), Lacey Act (16 U.S.C. 3371, et seq.), Bald and Golden Eagle Protection Act (16 U.S.C. 668), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Dated: May 24, 2017

Madonna L. Baucum,
Information Collection Clearance Officer, U.S. Fish and Wildlife Service.
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